

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

VICKI ACKERMAN,

Case No. 22-11180

Plaintiff,

F. Kay Behm

v.

United States District Judge

WAL-MART STORES, INC.,

Defendant.

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**ORDER FOR SUPPLEMENTAL BRIEFING**

This matter is currently before the court on Defendant Wal-Mart Stores' Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c). (ECF No. 14). On July 28, 2023, the Michigan Supreme Court issued an opinion in *Alham Kandil-El Sayed v. F & E Oil, Inc.* and *Renee Pinsky v. Kroger Co. of Michigan*. *Kandil-El Sayed v. F & E Oil, Inc.*, No. 16290, 2023 WL 4845611 (Mich. July 28, 2023). In these combined cases, the Michigan Supreme Court addressed Michigan's open and obvious doctrine as established by *Lugo v. Ameritech Corp., Inc.*, 464 Mich. 512 (2001). In *Lugo*, the Court held that, "if a danger is open and obvious, only where an invitee 'provide[s] evidence of special aspects of the condition' will the invitor still owe a duty of care." *Kandil-El Sayed*, 2023 WL

4845611 at \*4 (citing *Lugo*, 464 Mich. at 514). However, in these new cases, the Michigan Supreme Court overruled *Lugo* in two respects:

First, we overrule *Lugo*'s decision to make the open and obvious danger doctrine a part of a land possessor's duty. Rather, we hold that the open and obvious nature of a condition is relevant to breach and the parties' comparative fault. Second, we overrule the special-aspects doctrine and hold that when a land possessor should anticipate the harm that results from an open and obvious condition, despite its obviousness, the possessor is not relieved of the duty of reasonable care.

*Id.* The court now orders the parties to submit supplemental briefing addressing whether *Kandil-El Sayed* has any impact on their relevant arguments or on the outcome of Defendant's Motion for Summary Judgment. Briefs must be submitted by August 17, 2023, and must be limited to 15 pages.

**SO ORDERED.**

Date: August 3, 2023

s/F. Kay Behm  
F. Kay Behm  
United States District Judge